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CHARLES ELMORE

Supreme Court of the United States,

OCTOBER TERM, 1929.

No. 79.

HARRY C. MOORE, AS TREASURER OF GRANT COUNTY, INDIANA,
Petitioner,

vs.

SIDNEY Z. MITCHELL AND NIEL A. WEATHERS, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF RICHARD EDWARDS BREED, DECEASED,
Respondents.

BRIEF FOR RESPONDENTS

IN OPPOSITION TO PETITION OF THE PETITIONER FOR REHEARING.

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FRANCIS H. HORAN,
On the Brief.

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

Supreme Court of the United States

OCTOBER TERM, 1929

No. 79

HARRY C. MOORE, as Treasurer of Grant County, Indiana,
Petitioner,

vs.

SIDNEY Z. MITCHELL and NIEL A. WEATHERS, as Executors of the Last Will and Testament of Richard Edwards Breed, deceased,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION OF THE PETITIONER FOR REHEARING.

In reply to the petition of the petitioner for a rehearing of the above entitled cause, the respondents respectfully show:

Petitioner is the county treasurer of Grant County, Indiana. Respondents are the executors named in the will of Richard Edwards Breed appointed by the Surrogates' Court in the county and State of New York.

The petitioner as such treasurer brought suit in the United States District Court for the Southern District of New York to recover $982,516.22 alleged to be due to Grant County, Indiana, for personal taxes alleged to have been assessed against the said Richard Edwards Breed, and in his complaint relied solely for his authority to bring such suit on a statute of Indiana. The respondents moved to

dismiss the complaint on the ground that it failed to state a cause of action, that the court had no jurisdiction of the subject-matter, and that petitioner had not legal capacity to sue. The court declined jurisdiction and entered a decree dismissing the complaint. 28 F. (2nd) 997. The Circuit Court of Appeals affirmed. 30 F. (2nd) 600. This Court, in an opinion delivered February 24, 1930, by Mr. Justice Butler, decided unanimously that petitioner lacked legal capacity to sue, and affirmed the decree below. 50 Sup. Ct. 175.

Petitioner asks for a rehearing because he alleges that he believes that the conclusion reached by this Court is unsound and that petitioner did not lack legal capacity to maintain the suit. His contention is that the logical result of the opinion of this Court is to preclude his State from authorizing suit for recovery outside its territorial limits on a cause of action of any nature. But it is our understanding that this Court will decide cases only as they are presented, and that a party will not be heard to say that a rule announced by this Court as applicable to him will have an effect which he conceives to be harmful to other litigants in cases of other natures which may arise at other times.

Petitioner suggests that the analogies as to executors, administrators and receivers adopted by this Court in its opinion are imperfect. In addition to those authorities cited by this Court in its opinion there might have been cited numerous other such authorities, all to the effect that an executor, administrator, receiver, or indeed any officer of a state, acts with authority only when within the state which empowered him. See:

Johnson v. *Powers*, 139 U. S. 156; 11 Sup. Ct. 525; 35 L. Ed. 112 (1891);

Thorburn v. *Gates*, 225 Fed. 613 (D. C., S. D. N. Y. 1915);

Lawrence v. *Southern Pacific Co. et al.*, 177 Fed. 547 (C. C., E. D. N. Y. 1910);

Filer & Stowell Co. v. *Rainey et al.*, 120 Fed. 718 (C. C., N. D. Ill., N. D. 1903);
Watkins v. *Eaton*, 183 Fed. 384 (C. C. A., 2nd Circ., 1910).

Actions brought by executors or administrators or by receivers happen to be the most numerous illustrations of the rule, which is, of course, applied to all who depend for their authority upon powers conferred by a sovereign state. The assumption of the petitioner that the principle rests on practical considerations alone overlooks the most fundamental point in the relations of one sovereign state with another, that the authority of an official of a sovereignty ends at its boundaries.

By statute, of course, a sovereign state may permit a representative of another sovereignty to make use of its courts in order to enforce claims asserted by such representative, but the petitioner did not rely in his complaint nor does he here rely on any statute of the State of New York, or on any Act of Congress, permitting the county treasurer of a county of another state, when so empowered by statute of his home state, to sue in the state or federal courts of New York for the recovery of taxes alleged to be due to the county which he represents.

That liberty of every nation to yield or withhold the operation of authority conferred without its borders, referred to in *Vaughn* v. *Northup*, 15 Peters 1, 5, and quoted in the petition of the petitioner, is illustrated by the widespread adoption throughout the states of statutes allowing foreign executors or administrators access to the local courts, upon conditions fulfilled.

Indeed, *Great Western Mining Co.* v. *Harris*, 198 U. S. 561, contains language quoted in the petition of the petitioner which neatly states the difficulty with which he is faced when it says, that "such enlargement of authority [of a federal receiver outside the jurisdiction of his appointment] should come from legislative and not judicial action".

The mistake of the petitioner is in assuming that such reference to legislative action means legislative action as to the powers conferred upon a receiver by the jurisdiction in which he was appointed. But it was the legislature which regulated the jurisdiction of the forum to which this Court referred.

We respectfully submit that the petition for a rehearing should be denied.

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